APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,850	01/24/2001	Miguel Peeters	Q62670	3360

7590 10/16/2006	EXAMINER
SUGHRUE, MION, ZINN,	WANG, TED M

ART UNIT	PAPER NUMBER
2611	

SUGHRUE, MION, ZINN,
MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue N.W.
Washington, DC 20037-3213

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action *** Before the Filing of an Appeal Brief***	09/767,850	PEETERS ET AL.
	Examiner	**Art Unit**	
	Ted M. Wang	2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>27 September 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3 </u>months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: <u>3,4,6,8,9,11 and 12</u>.

    Claim(s) rejected: <u>1,2,5,7 and 10</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See continuation sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Continuation Sheet (PTOL-303)

Response to Arguments

1.   Applicant's arguments, filed on 09/27/2006, have been fully considered but they are not persuasive. The Examiner has thoroughly reviewed Applicants' arguments but firmly believes that the cited reference to reasonably and properly meet the claimed limitations.

Independent Claim 1

(1) *Applicants' argument* –

(a) "Therefore, as discussed above, and contrary to the Examiner's assertion, in the APA, the parameter values are not grouped in a subset and are individually transferred as constellation information, consequently leading to long initialization times. Assuming arguendo the bit values (b_i) and the gain values (g_i) could be considered a subset and assuming Mukherjee discloses the claimed interpolation, there would be no need to retrieve parameter values for carriers by interpolation in the APA since in the APA, the parameter values are not grouped into subsets and all of the parameter values are individually transferred." as recited; and

(b) "There is no teaching or suggestion that parameter values for all carriers in a carrier subset can be retrieved through interpolation." As recited; and

(c) "Consequently, the combination of Mukherjee with the APA is not obvious and it is apparent that the Examiner's reasoning is merely based upon hindsight upon viewing the Applicant's invention." as recited.

Examiner's response –

In response to applicant's argument as described in the above

paragraph, Examiner submits that

With respect to argument (a), the claim 1 as claimed by the instant

application does not specify the definition of the "carrier subset". The ANSI

T1 413-1998 as recited in page 1 lines 11-12 of the specification. The

ADSL transceiver initialization procedure is according to ANSI T1 413-

1998, paragraph 9.8.13 (C-B&G). C-B&G shall be used to transmit to the

ATU-R the bits and gains information (i.e., b_1, g_1, b_2, g_2, ...b_{31}, g_{31}), i.e.

constellation information, for ADSL upstream carriers. The b_i indicates the

number of bits to be coded by the ATU-R transmitter onto the *i-th*

upstream carrier; g_i indicates the scale factor, relative to the gain that was

used for that carrier during the transmission of R-MEDELY, that shall be

applied to the *i-th* upstream carrier. Where, *examiner considers all*

upstream carriers as one carrier subset that meets the limitation "at least

one respective carrier subset" as recited. In addition, the bits and gains

information (i.e., b_1, g_1, b_2, g_2, ...b_{31}, g_{31}), i.e. constellation information,

are the parameters with respect to the respective upstream carrier.

Furthermore, the claim 1 as claimed by the instant application fails to

specify the definition of the "interpolation" the respective carrier subset can

be retrieved through "interpolation". The MPEP 2111[R1] states that

During patent examination, the pending claims must be "given *>their<

broadest reasonable interpretation consistent with the specification." > In

re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).<

Based on the above explanation, the examiner interprets this limitation as

– any recovery process in downstream side involves interpolation will

meet the limitation of the interpolation as recited. Thus, the Mukherjee's

reference merely used to show that the recovery process cited in the

Mukherjee's reference, Fig.4 element 44C, Fig.9 element 96, column 22

lines 27-34), involves the interpolation process. Since the Figs.4 is an

ADSL modem and Fig.9 is a detailed block diagram of 64C and 44C at the

receiving side of the Fig.4, and the initialization process is based on the

ADSL ANSI T1-413 standard (column 22 lines 18-20), it is clear that the

Fig.4 can be used to receive the downstream signal at least one

respective carrier subset (here, again *examiner considers all upstream*

carriers as one carrier subset.) with constellation information and retrieve

it through interpolation (Fig.9 element 96) then use them to control the

upstream modulator (Fig.4 elements 42C-52C).

With respect to argument (b), the explanation of all the limitation is

already addressed in the above paragraph.

With respect to argument (c), The Mukherjee's reference, Fig.4

element 44C, Fig.9 element 96, column 22 lines 27-34, involve the

interpolation process. Since the Figs.4 is an ADSL modem and Fig.9 is a

detailed block diagram of 64C and 44C at the receiving side of the Fig.4,

and <u>the initialization process is based on the ADSL ANSI T1-413 standard</u> (column 22 lines 18-20), it is clear that the Fig.4 can be used to receive the downstream signal with constellation information (b_i, g_i) and retrieve them through interpolation (Fig.9 element 96) then use them to control the upstream modulator (Fig.4 elements 42C-52C).

Thus, for the explanation addressed in the above paragraph, the rejection under 35 U.S.C. 103(a) with APA and Mukherjee's reference is adequate.

Conclusion

2.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted M. Wang whose telephone number is 571-272-3053. The examiner can normally be reached on M-F, 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chieh Fan can be reached on 571-272-3042. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public

PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).

Ted M Wang
Examiner
Art Unit 2611

Ted M. Wang

CHIEH M. FAN
SUPERVISORY PATENT EXAMINER